vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1181 OF 2003

Deepak Bhaurao Chautmal
r/o.-S.No.19, Ambegaon Pathar
Tal.:Haveli, Dist.:Pune
Presently in
Yerwada Central Prison, Pune ... Appellant

V/s.

The State of Maharashtra ... Respondent

None for Appellant
Mrs.S.D. Shinde, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **NOVEMBER 16, 2006**

ORAL JUDGMENT (PER PALSHIKAR, J.):

. Being aggrieved by the order of conviction and sentence passed on 2.5.2003 in Sessions Case No.23 of 2003 convicting the accused under section 302 of the Indian Penal Code, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal.

2. When the matter was first called out, it was mentioned on behalf of the Advocate K.S. Patil that it be adjourned as he was busy in some other Court. Adjournment was refused and the learned Advocate mentioned for Mr.K.S. Patil was told to argue the matter after getting the paperbook. Another case was taken up, heard and decided. Yet, nobody came. In our opinion, it appears that the advocate is not interested

in working out the matter. We, therefore, decided to take up the matter on merits and with the assistance of the Additional Public Prosecutor, scrutinised the record and reappreciated the evidence on record. The prosecution case stated briefly is that the accused and his wife the victim were married two years ago till the date of incident. Admittedly, there were minor skirmishes between the man and the wife. On 20.9.2003, around midnight, the victim, the wife sustained serial burn injuries and was therefore, admitted to hospital. Later on, she succumbed to the burn injuries. The accused was prosecuted on the basis of suspicion expressed by her on 22.9.2003. The accused was the person who admitted her to the hospital and he had also sustained burn injuries to his face and hands. The prosecution examined five witnesses to prove its case and the learned trial Judge accepting the 2nd dying declaration convicted the accused to suffer imprisonment for life as mentioned above.

3. PW1 Arjun is the father of the victim Nanda, the wife of the accused. He has stated before the Court that his daughter was married to the accused two years ago and the first year of the marriage passed peacefully. In the second year, there were some acrimony between the accused and his wife. Ultimately, everything was patched up and the wife Nanda went to stay with the husband. On 20.9.2003, around midnight,

he was told by Janardhan Galande and Sanjay Waghmare that Nanda and her husband had sustained burn injuries and are admitted to Sassoon hospital. So even the information given to the father was that his daughter and his son in law have received burn injuries. He has then clearly deposed that he went to the hospital and saw that Nanda had sustained 100% burns. He then states "in the evening of 22.9.2002 Nanda had started speaking. I had asked her as to how she had sustained burns. Nanda had said to me that her husband had poured kerosene on her. .." But we have Exhibit 13 on record on which there is an endorsement by the Doctor that the victim was in a position to give a statement. A detailed statement has been given by the victim Nanda in which she has a very different story to tell. In Exhibit 23, the victim has said that around 11.30 in the night, she felt uneasy and therefore, wanted to have a cup of tea. She did not realise that the kerosene oil has come out of the stove and therefore she put it to light. The kerosene ignited and flared up as a result of which she sustained burns. In this statement, she has categorically stated that her face, both hands, legs, chest, stomach had burnt. Even she has stated that on hearing her cries, her husband got up, poured water on her in the process suffered burn injuries to his hands and face. He took his wife to hospital thereafter. This declaration recorded immediately on admission to the hospital therefore, goes counter to the

statement made on 22.9.2003 and the deposition of the father, PW1.

4. It will be seen from the evidence of PW1 Arjun and the declaration made by the victim on 22.9.2003 the name of Janardhan Galande finds mention as a person going for the help of the victim and informing the father PW1. Yet the prosecution has not taken care to examine this Janardhan Galande nor is there any explanation plausible for such non-examination. The prosecution could have brought before the Court the complete and true picture of the incident by examining this individual. Failure to examine that witness and contradictory statements made by the father and the victim in relation to the incident create a reasonable doubt in the minds of a prudent man as to what exactly has transpired. In such a situation, the well settled principles of law are that the benefit of doubt must go to the accused. In our opinion, it is definitely a case where there is a reasonable doubt as to the manner of death of Nanda, the victim. In our opinion, in such circumstances, the learned Judge ought to have acquitted the accused. It should have been considered that there is no explanation regarding the recording of exhibit 24 also. Once Exhibit 23 was recorded, what was the reason for recording the second statement on the next day is not stated. The prosecution could have explained the reason for recording the second statement also. It is

possible that it was required to be recorded at the request of the victim in which case such explanation must come forward. In the absence of any such explanation, it again creates doubt as to the reason and necessity of recording exhibit 24 when exhibit 23 was already on record. In such circumstances, it would be unsafe to convict a person as guilty beyond doubt.

5. In the result, therefore, the Appeal succeeds and is allowed. The order of conviction and sentence is set aside. The accused is in jail. He should be released forthwith, if not otherwise required in law.